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12

13 IN THE UNITED STATES BANKRUPTCY COURT
14 EASTERN DISTRICT OF WASHINGTON

15 In re:
16 GRAY LAND & LIVESTOCK, LLC
17 Debtor.

18 NO. 19-00467-FPC11

19 OBJECTION TO MOTION FOR
20 ALLOWANCE OF ADMINISTRATIVE
21 EXPENSE CLAIM

22 Critical Point Advisors, LLC ("CPA"), the Plan Agent as set forth in the
23 confirmed Second Amended Plan of Liquidation (the "Plan") and the Trustee under the
24 Grantor Trust Agreement (the "Trust Agreement") objects to the Motion for Allowance
25 of Administrative Expense Claim Pursuant to 11 U.S.C. § 503(a) and Payment Thereof
26 (the "Motion") (Docket No. 310) filed by the Orville Thomas Gray and Lynda Lee Gray
27 Living Trust (the "Parents' Trust") as set forth below. Initially, the Motion was filed "to
28 reserve the right of the [Parents'] Trust and Lynda Gray to assert and obtain approval of
such claims after determination as to the effectiveness of the Assignment and the
OBJECTION TO MOTION FOR
ADMINISTRATIVE EXPENSE

CLAIM - 1

S206728

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1 rejection and termination of the Lease as asserted by the [Parents'] Trust and Lynda
2 Gray, if necessary." Motion, ¶ 10. CPA acknowledges that the Motion was filed within
3 the timeframe required by the Second Amended Plan of Liquidation (Docket No. 286),
4 and therefore the Parents' Trust's right to assert and obtain administrative expense
5 treatment has been preserved.
6

7 Determination of the many issues raised in the Motion is beyond the scope of
8 simply granting or denying an administrative expense. While CPA and the Parents'
9 Trust are seeking expedited approval of a tolling arrangement to avoid the need to
10 presently file an adversary proceeding, CPA intends, unless another resolution can be
11 achieved, to file an adversary proceeding against the Parents' Trust by August 18, 2020
12 (or such later date as may be approved by the Court) seeking to determine and declare
13 the validity and extent of the parties' interest in the real property subject to the Lease and
14 Option to Purchase. Accordingly, there is ***no present*** need for the Court to determine
15 what if any right the Parents' Trust may have to an administrative expense claim and
16 doing so could run afoul of issues not properly before the Court that will be determined
17 in the adversary proceeding. Therefore, CPA requests that the Court's determination of
18 the Motion be deferred for the present time.
19

20 Subject to the foregoing, CPA objects to the Motion as follows:
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22 1. Parents' Trust's proof of claim was filed more than one year after the claims
23 bar date, and no motion to file a late claim has been filed. While disputed by
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28 **OBJECTION TO MOTION FOR
ADMINISTRATIVE EXPENSE
CLAIM - 2**
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1 the Parents' Trust, the docket shows that notice was provided to the Parents'
2 Trust trustees of the filing of the Debtor's Schedule G, as well as the Debtor's
3 Motion for Use of Cash Collateral. Docket Nos. 25 & 33. The proof of claim
4 is untimely and subject to disallowance under the Plan.

5
6 2. Paragraph 15 of the Farm Lease Agreement with Option to Purchase (the
7 "Agreement") specifically authorizes Rick T. Gray to assign the Agreement to
8 any entity in which he owns no less than fifty percent, without any consent of
9 the Parents' Trust. Importantly, the Agreement does not prohibit assignment of
10 the Agreement or execution of the option in the event the lessee or assignee is
11 in default.

12
13 3. The Parents' Trust's position that the alleged failure to assume the Agreement
14 within the timeframe set forth in Section 365(d)(4) somehow resulted in
15 termination of the agreement is incorrect as a matter of law. In re Ortiz, 400
16 B.R. 755, 762-63 (Bankr. D. Nev. 2009); In re Bergt, 241 B.R. 17, 25 (Bankr.
17 D. Alaska 1997). The Agreement was never terminated.

18
19 4. To be deemed an administrative expense under Section 503(b)(1)(A), the
20 moving party must meet two requirements: (1) the claim must have arisen
21 from a transaction with the debtor; and (2) the transaction must have
22 substantially benefitted the estate. Abercrombie v. Hayden Corp. (In re
23 Abercrombie), 139 F.3d 755, 757 (9th Cir. 1998); In re 800Ideas.com, Inc., 496

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28 **OBJECTION TO MOTION FOR
ADMINISTRATIVE EXPENSE
CLAIM - 3**

S206728

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1 B.R. 165, 175 (9th Cir. B.A.P. 2013). CPA's investigation into the assets
2 indicates that the 2020 crop will yield far less than the Debtor has represented.
3
4 In addition, at this time there is question whether CPA will be able to recover
5 on crop insurance associated with the 2020 crop. The benefit to the estate of
6 *use of the property* is, at a minimum, subject to question. (There is certainly
7 value to the estate associated with its interest in the property itself.) The
8 Motion does little more than assume that because the property was "used" in a
9 farming operation that a substantial benefit accrued to the estate. Rather, it
10 appears that the only substantial benefit any party could claim is or was to the
11
12 Parents' Trust.

13
14 5. No declaration or other document setting forth an evidentiary basis to support
15
16 the Motion has been filed. Without such evidence, the Parents' Trust cannot
17 meet its burden under Section 503 and the applicable case law.

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28 **OBJECTION TO MOTION FOR
ADMINISTRATIVE EXPENSE
CLAIM - 4**
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1 For the reasons set forth above, the Court's consideration of the Motion should be
2 deferred. To the extent the Court considers the Motion at this time, the Motion should
3 be denied for the reasons state above.
4

5 DATED this 13th day of August, 2020.
6

7 **WITHERSPOON · KELLEY**
8

9 By: /s/ Daniel J. Gibbons
10 Daniel J. Gibbons, WSBA #33036
11 *Attorneys for Plan Agent,
12 Critical Point Advisors, LLC*
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OBJECTION TO MOTION FOR
ADMINISTRATIVE EXPENSE
CLAIM - 5
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